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VIA ECF
Hon. Katherine B. Forrest
United States District Judge
Southern District of New York
500 Pearl Street
New York, NY 10007

Re: Tie Liang Qu v. CGY & J Corp. et al
Case No. 15-cv-01026

Dear Judge Forrest:

Plaintiff's counsel, along with Defendants' counsel, request that your Honor approve the settlement reached in this matter. A copy of the signed settlement agreement is annexed herein as Exhibit A.

This is an action by a single plaintiff for alleged unpaid wages, overtime and spread-of-hours pay brought under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. 201 et seq. and the New York Labor Law ("NYLL"). Plaintiff also seeks statutory damages based on Defendants alleged failure to provide certain notices that are required under the NYLL. Plaintiff alleges that he was formerly employed as a deliveryman in Defendants' Manhattan restaurant from March 2011 through October 30, 2013, working 6 days a week leading to total 73 hours a week. Plaintiff claims that Defendants failed to pay overtime in accordance with FLSA and NYLL.

Defendants claimed to have paid Plaintiff in compliance with the FLSA and NYLL. The parties also disagree on the amount of hours that Plaintiff worked. Defendants claim that Plaintiff's average daily working hour is 8-9 hour. Furthermore Defendants claim that Plaintiff took many days and sometimes weeks off for personal reasons in the alleged employment period.

If Plaintiff were to prevail on all of his claims, his unpaid wages, including liquidated damages, would total approximately $187,535.00. If Defendants prevailed on their stronger defenses, they claim that Plaintiff would only be entitled to about $20,000.00. However, for this settlement, Plaintiff only settled with Defendants CGY & J Corp. and Guo Yong Chen and is seeking to continue to litigate this case against Defendants Kitaro Sushi Corp. and De Shu Lin. The gross settlement amount between Plaintiff and Defendants CGY & J Corp. and Guo Yong Chen is $41,250.00 and the parties' settlement provides that this amount will include all attorneys' fees and costs. This reflects a reasonable compromise between the parties' vastly different claims. Given the sharp divisions in the parties' version of events, the fact that all trial witnesses would have an interest in the outcome and the limited documentary evidence available, this range of recovery is reasonable. The foregoing settlement was reached after a lengthy settlement discussions between counsels over the course of several months.

Court approval of an FLSA settlement is appropriate "when [the settlement] [is] reached as a result of contested litigation to resolve bona fide disputes." *Johnson v. Brennan*, No. 10-cv-471, 2011 WL 4357376, at * 12 (S.D.N.Y. Sept. 16, 2011). "If the proposed settlement reflects a reasonable compromise over contested issues, the court should approve the settlement." Id. (*citing Lynn's Food Stores, Inc. v. United States*, 679, F.2d 1350, 1353 n. 8 (11th Cir. 1982)).

The settlement agreement reached by the parties is fair. Although Plaintiff's recollection of his hours is sufficient to prove the hours that he worked and the wages he received, *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680, 687 (1946), superseded by statute, Portal-to Portal Act of 1947, 29 U.S.C. §216(b) (2006), as recognized in *Gorman v. Consol. Edison Corp.*, 488 F.3d 586, 590 (2d Cir. 2007), his recollection is not binding on the fact finder. Given Plaintiff's interest in the outcome of this matter, it is probable that the fact finder would apply some discount factor to his claimed hours. The fact that the matter is being resolved by way of settlement also eliminates the burden and uncertainty of collection proceedings.

Our settlement agreement also provides for reasonable attorney's fees. The total settlement amount in the above-referenced case is $41,250.00. Our firm is seeking $16,430 in attorney's fees and litigation expenses from this settlement amount. We have enclosed a true and correct copy of the contemporaneous time records kept by firm in connection with this matter. The total amount of billable work, as well as litigation expenses, results in a total bill of $19,562.5. In an effort to be reasonable, we are seeking less than full amount of these expenses.

We have enclosed a true and correct copy of the contemporaneous time records kept by firm in connection with this matter as Exhibit B. All of time billed was reasonably necessary to secure the results we have achieved for our client thus far. Generally, Hang & Associates, PLLC represents both plaintiffs and defendants with respect to litigating claims arising out of the employment relationship, including claims relating to employment discrimination, wage and hour issues, and contact disputes. While the majority of our plaintiff-side work is contingency based, we typically calculate our attorney fees based on our hourly rate. The traditional hourly billing rates for Jian Hang, Principal Attorney is $375. The traditional hourly billing rates for Associates is $275. I respectfully submit that my years of experience and the fact that my practice focuses primarily on employment law, with a significant percentage devoted to wage and hour litigation in particular, warrants the hourly rates that we seek. We spent over 51 hours on this matter, which amounts to a total of $19,562.5 including costs and fees, but are only requesting $16,430 in this settlement agreement. The number of attorney hours represented in the attorney worksheet is reasonable and represents hours that were necessarily expended on this litigation.

Given the conflicting evidence, the quality of the evidence and counsel and the allocation of the burden of proof on Plaintiff, the settlement represents a reasonable compromise with respect to contested issues. It should be approved. *See Reyes v. Altamarea Group, LLC*, 10-cv-6451 (RLE), 2011 WL 4599822 at * 6 (S.D.N.Y. Aug. 16, 2011) (Ellis, M.J.).

Respectfully submitted,

/s/ Jian Hang
Jian Hang, Esq.